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Supplementary Witness Statement

Name	Richard Glenn
Address	Available to the Royal Commission
Occupation	ACT Public Servant - Director-General Justice and Community Safety
Date	6 April 2023

1. I refer to the Notice to Give Information and Produce Documents (NTG-204) dated 15 February 2023 directed to me by the Royal Commission into the Robodebt Scheme **(Notice)** [RGL.9999.0001.0001].

2. This statement made by me is true and correct to the best of my knowledge and belief. It should be read in conjunction with my earlier statement to the Royal Commission into the Robodebt Scheme **(Royal Commission)** in response to the Notice [RGL.9999.0001.0003] **(First Statement)** and the transcript of my evidence to the Royal Commission on 9 March 2023.

3. This statement has been prepared by me with the assistance of my lawyers. It is based on my recollections and on documents exhibited by the Royal Commission and documents made available to me by the Office of the Commonwealth Ombudsman **(Office)**.

4. As previously advised in my First Statement, the current Commonwealth Ombudsman, Iain Anderson, delegated authority to me and to my lawyers under section 34 of the *Ombudsman Act 1976* (Cth) **(Ombudsman Act)** to disclose information to the Royal Commission to assist its inquiries.

5. This statement is produced to the Royal Commission on the basis that it and its exhibits will be tendered and received in evidence by the Royal Commission pursuant to the Notice and on the basis that the statement will be treated as evidence which is subject to section 6DD of the *Royal Commissions Act* 1902 (Cth).

My role as Acting Commonwealth Ombudsman

6. Evidence as to the function and role of the Commonwealth Ombudsman under the Ombudsman Act is before the Royal Commission in the statement of the current Ombudsman, Iain Anderson [IAN.9999.0001.0002 at [11]-[16]].

7. The function of the Ombudsman under the Ombudsman Act is to:

   (a) investigate actions that relate to matters of administration in respect of which complaints have been made to the Ombudsman: section 5(1)(a); and

   (b) investigate actions that relate to matters of administration by their own motion: section 5(1)(b).

8. During my time at the Office, including the period in which I held the position of Acting Ombudsman, it was my expectation that staff conducting an investigation would generally follow the Commonwealth Ombudsman's Work Practices Manual, see [LMA.1000.0001.2607 at 2727]: I note that this version is dated December 2017, after the

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conclusion of the Own Motion investigation into the Scheme (**Own Motion investigation**), and release of the resulting report in April 2017 entitled 'Centrelink's automated debt raising and recovery system - A Report about the Department of Human Services' Online Compliance Intervention System for Debt Raising and Recovery' (**Report**) [LMA.1000.0001.2996]. As far as I was aware, this expectation was met.

9. However, consistently with s8(2) of the Ombudsman Act, I maintained a discretion to determine various consultation matters as well as how individual investigation teams would operate having regard to the activities they were undertaking.

10. It was my experience that while the Ombudsman had responsibility, and provided strategic oversight for, investigations, the Ombudsman was reliant on the skills, experience and undertakings of a well-equipped team in the Office to actually undertake and complete the investigations.

11. During my tenure as Acting Ombudsman, I was conscious of the following:

    (a) the scope of my role as Ombudsman, which was to discharge an independent complaints investigation and review function, but not to act as a judge or tribunal;

    (b) the Office was subject to many competing demands and had limited resources. Further, the former Ombudsman Colin Neave and Senior Assistant Ombudsman George Masri had recently left the Office. The Office was engaged in maintaining its complaints management function, including those received relating to the Centrelink Online Compliance Intervention program (**Scheme**), which had greatly increased. It was also engaged in a number of other investigations, projects and preparation of submissions which were subsequently published, which I have summarised at Annexure A: Summary of the work of the Ombudsman's office December 2016-May 2017; and

    (c) the length of my tenure. My position of Ombudsman was an acting position only and by the time I was finalising the Report I was aware I only had two weeks remaining in the role. I was therefore realistic about what I could achieve in that limited timeframe, and mindful that I should set achievable targets which would not have the effect of either tying my successor too greatly or risk leaving a number of partly completed tasks which might not be able to be progressed while my successor familiarised themselves with the Office and decided what priorities they wished to pursue.

12. Against this background, while Acting Ombudsman, I was responsible for the work of the Office and the team that conducted the initial Own Motion investigation and produced the Report.

13. This team included Louise Macleod, who led the team, and team members, including Amie Meers and Suseela Durvasula. I was and remain very satisfied with the work done by Ms Macleod and her team in producing the Report, in trying circumstances, in a very short space of time.

14. I consider the Report:

    (a) represented the springboard for further investigation of the Scheme by the Office and others;

    (b) provided a strong foundation for the Office investigations which followed; and

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(c) was critical of the Scheme and highlighted a range of issues related to the Scheme that needed to be addressed.

Process of the 2017 Own Motion investigation and Report

15. I did not receive and was not made aware of Ms Macleod's first statement in relation to her conduct of the Own Motion investigation and preparation of the Report [LMA.9999.0001.0011] prior to giving evidence on 9 March 2023. However, I have now considered it.

16. Evidence as to the process followed by the team which conducted the Own Motion investigation, stemming from initial section 8 notices issued by the Office to DHS in December 2016 to commencement of the Own Motion investigation by the then Ombudsman, Colin Neave on 10 January 2017, and its scope, is before the Royal Commission in the first statement of Ms Macleod [LMA.9999.0001.0011 at [28]-[38]].

17. I agree that I provided Ms Macleod with appropriate assistance and guidance during this period, including some notes and a shell document to assist her with the investigation process and report structure, and headings for various sections, see [LMA.1000.0001.2819] and [LMA.1000.0001.1989]. I also agree that the decision about the ultimate conclusions included in the Report was mine, in accordance with sections 15(1)(a) and 35A(3) of the Ombudsman Act.

18. However, while I was provided with regular progress updates, I do not recall having daily meetings with Ms Macleod. My recollection is Ms Macleod worked with her team (including Ms Meers) to conduct the investigation, including undertaking work on site at DHS from time to time. Ms Macleod was primarily responsible for completing the analysis of information provided by the Departments (principally DHS), liaising with the Departments, completing analysis of complaints and complaints data, discussions with other stakeholders and producing working drafts of what became the Report. This is as described in Ms Macleod's first statement [LMA.9999.0001.0011 at [45]-[57]].

19. I do not recall undertaking any substantive drafting of the Report myself, though as outlined above, I did provide direction as to what I expected within any report resulting from the investigation.

20. I was not always copied into emails or necessarily involved in the process the team followed in considering comments and proposed changes received from the Departments after consultation, and did not make wording changes. Ms Macleod and the investigation team undertook these tasks as explained at Annexure B - Correspondence and related documents from which Richard Glenn was omitted regarding amendments to draft Report.

21. After I ceased as Acting Ombudsman I noted with disappointment that some media and politicians used the Report to validate the Scheme rather than acknowledge those matters we clearly raised concerning its flaws. That use of the Report did not reflect the outcome of the Own Motion investigation or content of the Report.

22. I had no role in the preparation of those media statements and reports and I do not believe that it is something that I could have reasonably foreseen or controlled. Notwithstanding this, as evidenced by the summary at Annexure C - Summary of media articles, there were a range of opinions concerning the Report expressed in the media, but on the whole the majority of the media highlighted that the Report was critical of the Scheme.

23. I consider the Report found many flaws in the Scheme, as evidenced by the analysis of the Report at Annexure D - Summary of negative statements in the Report, but accept that

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there are some parts of the Report that might be characterised as "positive" for the Scheme.

24. Below I discuss the issues that have been raised with me by the Royal Commission about the preparation and content of the Report.

Legality, Accuracy of Averaging and Recovery Fees

25. As John McMillan notes in his statement to the Royal Commission, it is a feature of the Ombudsman process for the Office to have regular formal and informal interaction with Departments, at all levels and in many forms, depending on the process in which the Office is engaged [RBD.9999.0001.0499 at [6]].

26. I considered it was important for the Office to be able to work with agencies when conducting its work.

27. In my view this did not reduce the independence and impartiality of the Office and did not mean that the Office will inappropriately agree with the agency it is investigating. I considered working with agencies increased the chances of the Office achieving positive outcomes by agencies making changes required to effectively implement the recommendations of an investigation and otherwise working with the Office to improve outcomes for individuals. I note that the Office could not compel a department or agency to adopt a recommendation of the Office.

28. In my experience, acting in an unduly 'adversarial' or 'prosecutorial' manner would lead to the agency being investigated becoming defensive and ceasing to work cooperatively with the Office. This would prejudice what the Office sought to achieve as a result of investigating aspects of a department or agency's operations.

29. The Own Motion investigation and preparation of the Report were challenging for the investigation team, due to a number of factors, including:

(a) the complexity of the investigation;

(b) time pressure. Not only was I aware of my own limited tenure as Acting Ombudsman, but I thought it was critical to complete the Own Motion investigation and release the Report as soon as possible given the recommendations we put forward were likely to bring important improvements for all involved in the Scheme; and

(c) the failure of the relevant Departments to provide requested relevant information (see for example [LMA.9999.0001.0011 at [58]).

30. On reflection I believe that the Departments misled both me and the Office, as evidenced by the analysis at Annexure E - List of DSS/DHS correspondence

31. In my First Statement I discussed my approach to the content of the Report [RGL.9999.0001.0003 at [23]-[25]]. I reject any assertion that the Departments influenced or "wrote" the Report. Ms Macleod was primarily responsible for reviewing and considering the Departments' comments, and I have no reason to believe that she accepted any position she was not comfortable with when she accepted any amendments. As noted above, while I was not involved in the review of each of the Department's proposed changes, I stand by the Report as reflecting the views of the Office with respect to the Scheme as at the date of the Report.

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32. I was, and remain, of the view that the way the Own Motion investigation was conducted and the Report prepared was consistent with the independence of the Office.

Lawfulness

33. In my First Statement I provided the Royal Commission with my view of the reasons why I decided that the Report should not deal with the legality of the Scheme [RGL.9999.0001.0003 at [36]-[47]].

34. During my evidence to the Royal Commission, I was questioned about the fact that the Report as published did not deal with the question of the Scheme's legality.

35. The lawfulness of the Scheme was included in the announcement of the initial scope of the Own Motion investigation. As Ms Macleod deposed, from the start it was difficult for the investigation team to consider whether the Scheme was legal, due to a lack of information provided by the Departments in response to section 8 notices [LMA.9999.0001.0011 at [58]].

36. However, the investigation team requested all legal advice the Departments had received and confirmation from the Departments, including senior officers of those Departments, that the question of legality had been satisfactorily considered and resolved and that the Scheme complied with the relevant legislative requirements. Further details of this are set out in the summary at Annexure F - Correspondence of the investigation team seeking copies of Departmental legal advice or confirmation of legal matters.

37. I recollect receiving an early draft of the Appendix B section on legality on or about 20 February 2017. This is consistent with the statement of Louise Macleod [LMA.9999.0001.0011 at [87] which confirmed this meeting and confirmed the provision of this early draft of Appendix B [LMA.1000.0001.2975 at paragraph 2.50 of Appendix B] which provided that the question of legality "is complex and can only be settled with certainty by the courts or be clarified by an Act of Parliament". I understand this draft was prepared by Ms Meers, with input from Ms Durvasula and under the immediate direction of Ms Macleod. That was my own view on the question of legality at the time the Report was prepared and finalised.

38. I was not convinced that the available information enabled a final conclusion in relation to the legality of the Scheme to be confidently expressed and the investigation team should consider whether there were any further materials or information on which an opinion could be based [RGL.9999.0001.0003 at [36]-[37]]. So while I was happy with the above position, I was not satisfied that a wider or more definitive conclusion could be reached in relation to legality of the Scheme.

39. I was also cognisant of the assurances that had been provided by the Departments that the Scheme was legal and was cautious of asserting a major government program was unlawful without a clear basis for doing so.

40. My recollection is different to that of Ms Macleod in relation to how the Office finalised a position on what to say in the Report with respect to the legality of the Scheme. It is my recollection that:

(a) I queried the robustness of the analysis of legality originally proposed by Ms Macleod and Ms Meers and tested their knowledge of the views of the Departments as well as the confidence that they had in their own views. I consider that such questioning of the investigation team by the Ombudsman was appropriate. Following these discussions, Ms Macleod and her team updated the draft of the Report;

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(b) whilst I commented on the draft Report, I did not make any substantive amendments to the draft Report; and

(c) neither Ms Macleod nor Ms Meers raised any concern with me in relation to the views I had expressed in relation to how the Report should deal with the legality of the Scheme.

41. Notwithstanding the matters referred to in the preceding paragraph, I wish to emphasise that the lawfulness of the Scheme was an important consideration in the Own Motion investigation and the preparation of the Report. I consider this issue was thoroughly investigated, and, along with issues around accuracy of data and debt calculation, discussed below, it was a fundamental aspect of the Office's investigation. Amongst other things the Report covered:

(a) DHS using PAYG data from the ATO using its 'information gathering powers under the Social Security Act 1991'; see [LMA.1000.0001.2996 page 5 at [2.1]];

(b) the method by which the 10 per cent recovery fee was applied under the *Social Security Act* 1991: [LMA.1000.0001.2996 page 8-9 at [3.7]-[3.13]];

(c) the requirement for public administration processes to be transparent: see [LMA.1000.0001.2996 page 9 at [3.14], and Appendix B page 39 at [2.10]]

(d) a recommendation concerning improving the Guide to Security Law to 'include guidelines about the process for obtaining employment income evidence': see [LMA.1000.0001.2996 page 14 at [3.27]];

(e) the use of fortnightly income tests applied under the *Social Security Act* 1991 (Cth): see [LMA.1000.0001.2996 Appendix B page 42 at [2.31]];

(f) the use of automated decision making under section 6A of the *Social Security (Administration) Act* 1999: [LMA.1000.0001.2996 Appendix B page 43 [2.35]]; and

(g) fettering the exercise of discretion with the use of automated decision making: see [LMA.1000.0001.2996 page 43 Appendix B at [2.36]].

42. On the basis of the matters raised in the investigation and the correspondence and queries made by Ms Macleod and her team, I received a letter from the Secretary of DSS to the Office dated 4 April 2017 confirming that DSS was satisfied the Scheme meets legislative requirements [LMA.1000.0001.2996 at 3050], I attached considerable weight to this assurance from a senior Commonwealth Departmental Secretary, who had served at the highest levels of Government for many years. I considered the issue of legality of the Scheme was investigated by Ms Macleod and her team and raised with both Departments on a number of occasions at different levels.

43. I was conscious that:

(a) the Departments had significant legal resources available to them which had been utilised to advise on the legality of the Scheme;

(b) the Office is heavily reliant on full and correct information being provided by Departments in response to the Office's requests for information;

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(c) the Office could not function effectively if it was required to question whether information provided by Departments in response to complaints or investigations was true and correct. My assumption at the time was that public servants would comply with the APS Code of Conduct in their dealings with the Office; and

(d) at the time of the Own Motion investigation, as summarised at Annexure G - Table of pending AAT cases, the Office was aware that the Scheme was being considered by the AAT (from which an appeal could be brought in, or a question of law referred to, the Federal Court) in a number of cases and this appeared to me to be the appropriate forum to resolve the question of the legality of the Scheme.

44. The Report did not assert or otherwise conclude that averaging of income was either lawful or unlawful. The Report stated:

(a) the Ombudsman's recommendation to further improve the initial contact and messages within the system, including clearly explaining that ATO income may be averaged across the person's employment period and the consequences this may have for the debt amount: [LMA.1000.0001.2996, page 2];

(b) the 'OCI system does not clearly state it uses the averaging method or explain this may be inaccurate in some cases';

(c) 'the messaging within the system itself should give a clearer explanation of what it means if the total ATO income is 'averaged' across the employment period': [LMA.1000.0001.2996 page 27 at [4.8]]; and

(d) the Ombudsman's view that the 'risk of over-recovering debts [as a result of averaging] from social security recipients should be the subject of more thorough research and analysis': [LMA.1000.0001.2996, Appendix B [2.33]].

45. I accept the Report did not clearly state that it was not purporting to express a concluded view on the legality of the Scheme. With the benefit of hindsight, I can see that if it had this may have made it more difficult for the Report to be misrepresented as supporting the legality of the Scheme. However, this risk of misrepresentation was not something I considered at the time. I was focused on completing a report within my tenure that outlined substantive matters of improvement for the Scheme.

Referral to the AAT

46. By way of elaboration on the matters referred to in [45]-[46] of my First Statement, at the time I was aware that:

(a) there were AAT matters on foot and I assumed that they would consider this issue. I did not consider that the Department might seek to manipulate AAT matters to actively avoid any decision on the legality of the Scheme. It therefore was not clear to me that a further referral of this issue to the AAT would achieve anything;

(b) the Departments had obtained legal advice in relation to the Scheme. DSS were sufficiently confident that the Scheme was legal for their Secretary to provide a written assurance to me of such legality;

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(c) the Office was not well resourced to run what the AAT had advised would need to be a fully contested AAT hearing;

(d) our focus was not just legality - legality was just one part of our broader consideration of the Scheme as required by the Ombudsman Act; and

(e) time was of the essence and I determined that referral to the AAT would delay finalisation of the Own Motion investigation and Report.

47. In my view these considerations weighed in favour of not referring the scheme to the AAT. Instead, I focused on completing the Report as soon as practicable.

48. I considered it was important to finalise the Report quickly because:

(a) the Scheme was having an immediate effect upon people and it was therefore important to make immediate recommendations in relation to the Scheme;

(b) my term as Acting Ombudsman was ending and I wanted to complete the Report before it ended so that the next Ombudsman could continue with the work we had started;

(c) finalisation of the Report would not prevent any further assessment of the Scheme by the Office or referral to the AAT; and

(d) the continuing assessment of the Scheme within the Office was occurring in any event, with the drafting of a section 12(4) notice, of which several versions appear in the Ombudsman's files (for example, [RGL.1000.0001.1481]).

49. I note that although subsequent Ombudsman investigations considered the legality of the Scheme, those reports also did not include detailed final conclusions on the legality of the Scheme (see [LMA.9999.0001.0012 at [26]-[33]) and also did not refer the Scheme to the AAT for consideration.

Conclusion

50. In light of the matters outlined above and in my First Statement and oral evidence to the Commission I consider that on the basis of our knowledge at the time the Own Motion investigation and Report and my conduct as Acting Ombudsman was impartial and appropriate. That is not to say that if I had known at the time what has emerged during this Royal Commission I would have acted in the same way.

Signature	[redacted]	Witness	[redacted]
Name	RICHARD GLENN	Name	ANDREW LITTLE
Date	6.4.23	Date	6/4/23

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Annexure A - Summary of the work of the Office December 2016 to May 2017

Document Title	Document Type and assessment
Department of Human Services: Accessibility of Disability Support Pension for remote Indigenous Australians	Report
Department of Immigration and Border Protection - the administration of people who have had their bridging visa cancelled due to criminal charges or convictions and are held in immigration detention	Report
Accessibility of Indigenous Language Interpreters: Talking in language follow up investigation	Report
State of the Health Funds Report 2017	Report
Submission by the Commonwealth Ombudsman: Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 and related bill	Submission
Submission by the Commonwealth Ombudsman: Inquiry into the *Social Services Legislation Amendment (Welfare Reform) Bill 2017*	Submission
Annual report by the Commonwealth Ombudsman under s 13(1) of the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* for the period 1 July 2015 to 30 June 2016	Report
Investigation into the processing of asylum seekers who arrived on SIEV Lambeth in April 2013	Report
Submission by the Commonwealth Ombudsman: Inquiry into the provisions of the Veterans' Affairs Legislation Amendment (Digital Readiness and other measures) Bill 2016	Submission
Submission by the Commonwealth Ombudsman: Inquiry into the operation of the Australian Defence Force's resistance to interrogation (RTI) training	Submission
"Your story matters" brochure	Brochure
Immigration assessments tabled in Parliament 31 May 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 24 May 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 1 March 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 6 December 2017	Detention Review Assessments

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Document Title	Document Type and assessment
Immigration assessments tabled in Parliament 29 November 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 18 October 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 13 September 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 6 September 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 21 June 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 14 June 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 10 May 2017	Detention Review Assessments
Immigration assessments tabled in Parliament 15 February 2017	Detention Review Assessments
Submission by the Commonwealth Ombudsman: Inquiry into matters raised by the NSW Police Strike Force CIVET	Submission
Additional Comments by the Commonwealth Ombudsman: Inquiry into the provisions of the Veterans' Affairs Legislation Amendment (Digital Readiness and other measures) Bill 2016	Submission
Overseas Students Ombudsman Presentation for TPS National Roadshow	Speech
Overseas Students Ombudsman Presentation for the Council of International Education	Speech
Report to the Attorney-General on agencies' compliance with the Surveillance Devices Act 2004 for the period 1 July to 31 December 2016	Report
Overseas Students Ombudsman Submission on proposed changes to the National Code of Practice for Providers of Education and Training to Overseas Students 2007	Submission
Overseas Students Ombudsman Presentation for Australian Federation of International Students Information Day, Melbourne	Speech
Private Health Insurance Ombudsman State of the Health Funds Report 2016	Report
40th Anniversary of the Commonwealth Ombudsman Book	Brochure

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Document Title	Document Type and assessment
Submission by the Commonwealth Ombudsman: Response to Productivity Commission's Issues Paper, 'National Disability Insurance Scheme Costs'	Submission
Submission by the Commonwealth Ombudsman: Response to Productivity Commission's Issues Paper, 'Reforms to Human Services'	Submission
Overseas Students Ombudsman Presentation for Universities Australia	Speech
Overseas Students Ombudsman Presentation for ICEF Australian New Zealand Agent (ANZA) Workshop	Speech
Centrelink's automated debt raising and recovery system - A Report About The Department Of Human Services' Online Compliance Intervention System for Debt Raising and Recovery	Report
Submission by the Commonwealth Ombudsman to the Joint Standing Committee on the NDIS - the Provision of Services under the NDIS for People with Psychosocial Disabilities related to a Mental Health Condition	Submission
Submission by the Commonwealth Ombudsman to the Inquiry into the Provisions of the *Veterans' Affairs Legislation Amendment (Omnibus) Bill 2017*	Submission
Overseas Students Ombudsman Presentation for NEAS	Speech
A report on the Commonwealth Ombudsman's monitoring of agency access to stored communications and telecommunications data under Chapters 3 and 4 of the *Telecommunications (Interception and Access) Act 1979* for the period 1 July 2015 to 30 June 2016	Report

Annexure B - Correspondence and related documents from which Richard Glenn was omitted regarding amendments to draft Report

Date	Description	Doc ID
23 January 2017	Email chain between Suseela Durvasula and Jason Ryman, copied to Louise Macleod, Arnie Meers and Ombudsman Liaison (DHS), concerning DHS responses to section 8 questions regarding income averaging, legal advice and the 10% recovery fee.	LMA.1000.0001.0479
25 January 2017	Email from Jason Ryman to Louise Macleod and Suseela Durvasula, copied to Ombudsman Liaison, Joanne Lambert, Elisha Hodgson and Rebecca Wetzell (DHS), providing information requested by Louise Macleod in response to request for information about the development of the Scheme.	LMA.1000.0002.0086
31 January 2017	Email from Jason Ryman to Louise Macleod, Suseela Durvasula and copied to Ombudsman Liaison, Elisha Hodgson, Joanne Lambert, Rebecca Wetzell containing Jason Ryman's comments on the outline of the draft report.	RGL.1000.0000.0839
2 February 2017	Outline of draft Report with comments provided by DHS.	CTH.1000.0007.0534
3 February 2017	Comments from Suseela Durvasula on DHS comments on draft Report outline on legal advice.	LMA.1000.0001.1679
7 February 2017	Email Chain between Michael Robinson (DHS), Louise Macleod, Suseela Durvasula and Tricia Hennessy (Office), copied to Marie Assenza (DHS) and Ombudsman Liaison (DHS) addressing the following: • action items for DHS arising from the meeting on 3 February 2017; and • internal Office correspondence in which Louise Macleod asked if there was anything missing from the list and Arnie Meers responded that she provided amendments for clarity.	LMA.1000.0001.1012
19 February - 23 February 2017	Email chain between Louise Macleod and Verity Hughes (DSS), copied to Ombudsman Complaints and the Social services and indigenous team (DSS), in which Louise Macleod requested copies of DSS legal advice and Verity Hughes provided legal advice.	RGL.1000.0000.1119

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RGL.9999.0001.0004_0011

Date	Description	Doc ID
19 February - 23 February 2017	Email chain between Louise Macleod, Suseela Durvasula and Amie Meers regarding Report progress.	RGL.1000.0000.1108
20 February 2017	Email from Amie Meers to Louise Macleod providing a brief for meeting with DHS about concerns regarding legal advice.	LMA.1000.0001.2087
24 February 2017	Email from Amie Meers to Louise Macleod and Suseela Durvasula regarding absence of lawyers from decision making team for the OCI scheme.	LMA.1000.0001.1238
23 February 2017 20 March 2017	Email from Amie Meers to Tiffany Boska and Suseela Durvasula, copied to Louise Macleod, criticising DHS legal advice. DHS comments inserted as tracked changes into the draft report.	RGL.1000.0000.1119 CTH.3005.0003.6061
20 March 2017	DHS email to Office with comments inserted as tracked changes into the draft Report.	CTH.3005.0003.6060
20 March 2017	Email from Michael Robinson (DHS) to Louise Macleod, copied to Annette Musolino, Jason McNamara, Alison McCann, Ombudsman Liaison (DHS), attaching a marked-up version of the draft Report from "today's discussion and feedback from other areas that I have incorporated".	RGL.1000.0000.1600
22 March 2017	Email chain between Amie Meers and Louise Macleod commenting on DHS' edits to the draft Report.	RGL.1000.0000.2046
23 March 2017	Comments on the draft Report from Suseela Durvasula.	LMA.1000.0001.0257
March 2017	Draft Report with tracked changes and comments by Louise Macleod, Michael Robinson, Amie Meers and "Microsoft Office User".	RGL.1000.0000.1797

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Annexure C - Summary of media articles

PART A: This table summarises media coverage following the publication of the Report as exhibited in the Royal Commission.

- Green = No mention of the Report
- Orange = Article reports that the Report is critical of the Scheme
- Yellow = Article reports that the Report is mildly critical of the Scheme
- Blue = Article reports that the Report supports the Scheme

Of the 21 articles exhibited following the publication of the Report, approximately:

- 67% did not address the Report at all;
- 33% did address the Report, and of these:
  - 78% reported that the Report was critical of the Scheme;
  - only one article (being less than 5% of the total reports exhibited) stated that the Report includes only mild criticism; and
  - only one article (being less than 5% of the total reports exhibited) stated that the Report provided accurate debt outcomes.

Date	Publisher	Summary	Document ID
10 April 2017	Canberra Times	Article reports that the Report was critical of the Scheme	RBD.9999.0001.0149
10 April 2017	Australian Associated Press	Article reports that the Report was critical of the Scheme	RBD.9999.0001.0160
10 April 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0161
10 April 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0162
11 April 2017	Canberra Times	Article reports that the Report was critical of the Scheme	RBD.9999.0001.0163
11 April 2017	The Australian	Article reports that the Report was critical of the Scheme	RBD.9999.0001.0164
19 April 2017	Canberra Times	Article reports that the Report was critical of the Scheme	RBD.9999.0001.0152
26 April 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0165
27 April 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0166

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Date	Publisher	Summary	Document ID
28 April 2017	Australian Financial Review	No mention of the Report	RBD.9999.0001.0167
29 April 2017	Canberra Times	Opinion piece reports that the Report contains mild criticisms of the Scheme	RBD.9999.0001.0168
3 May 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0169
3 May 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0170
3 May 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0171
5 May 2017	Canberra Times	No mention of the Report	RBD.9999.0001.0172
8 May 2017	Sydney Morning Herald	No mention of the Report	RBD.9999.0001.0173
8 May 2017	The Australian	No mention of the Report	RBD.9999.0001.0174
17 May 2017	Canberra Times	Article quotes Jason McNamara as saying that the Report found the Scheme was "providing accurate debt outcomes"	RBD.9999.0001.0175
19 May 2017	SBS News	No mention of the Report	RBD.9999.0001.0176
29 May 2017	Crikey	No mention of the Report	RBD.9999.0001.0177
30 May 2017	The Guardian	No mention of the Report	RBD.9999.0001.0178

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RGL.9999.0001.0004_0014

PART B: This table summarises media coverage between the period 10 April 2017 - 31 May 2017 which addresses the Scheme following the release of the Report. I have sought to tender the following articles.

- Green = No mention of the Report
- Orange = Article reports that the Report is critical of the Scheme
- Grey = neutral mention of the Repot

The articles located as a result of additional media searches demonstrate different treatments of coverage of the Scheme and the Report compared to what was covered in the previously exhibited reports. A total of 17 additional articles were located, and of these:

- 53% reported that Report is critical of the Scheme;
- 12% mentioned the Report but did not assess it; and
- 35% do not assess the Report.

Date	Publisher	Summary	Document ID
10 April 2017	Sydney Morning Herald	'Not reasonable or fair': Ombudsman slams Centrelink's robo-debt scheme	RGL.1000.0003.0001
10 April 2017	The Guardian	Centrelink debt scandal: report reveals multiple failures in welfare system	RGL.1000.0003.0007
10 April 2017	The Guardian	Centrelink inquiry told debt retrieval system should be abolished due to flaws	RGL.1000.0003.0004
11 April 2017	The Guardian	Centrelink robo-debt 'abject failure' and arguably unlawful, Victoria Legal Aid says	RGL.1000.0003.0011
11 April 2017	Crikey	Centrelink contradicts earlier statements, says paying a debt is admitting it's accurate	RGL.1000.0003.0009
12 April 2017	The Guardian	Almost half of all Centrelink robo-debt cases sent to private debt collectors	RGL.1000.0003.0015
19 April 2017	The Guardian	Centrelink's debt data-matching failed government's privacy guidelines, campaigners say	RGL.1000.0003.0018
20 April 2017	The Guardian	Centrelink criticised for debiting war widow owed $18,000 after administrative error	RGL.1000.0003.0020
26 April 2017	Canberra Times	Centrelink inquiry hears robo-debt collectors never visited homes	RGL.1000.0003.0024

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26 April 2017	The Guardian	Centrelink recalled 'robe debts' from collection agency as ministers defended system	RGL.1000.0003.0027
4 May 2017	The Age	Centrelink suspends carer's payments after a phone call leaving couple destitute	RGL.1000.0003.0030
8 May 2017	Canberra Times	Human Services Minister Alan Tudge cleared over release of robo-debt information	RGL.1000.0003.0033
9 May 2017	Crikey	AFP declines to investigate Tudge over breach of privacy in Centrelink robo-debt saga	RGL.1000.0003.0035
16 May 2017	The Guardian	Centrelink robo-debt correspondence 'incomprehensible', Senate inquiry told	RGL.1000.0003.0037
18 May 2017	Crikey	Information Commissioner to audit Centrelink's data matching for robo-debt notices	RGL.1000.0003.0039
18 May 2017	The Guardian	New privacy code for public servants after Centrelink 'robo-debt' debacle	RGL.1000.0003.0041
19 May 2017	Crikey	Human Services plans massive robo-debt expansion on pensioners	RGL.1000.0003.0044

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Annexure D - Summary of negative statements in the Report

Analysis of negative statements made in the final version of 'Centrelink's automated debt raising and recovery system - A Report about the Department of Human Services' Online Compliance Intervention System for Debt Raising and Recovery April 2017'

Negative statements	Document reference
Complaints	
Many complaints received from people who incurred debts under the Scheme.	LMA.1000.0001.2996 page 4 at [1.2]
Transparency and usability	
Letters sent to customers before 20 January 2017 to alert them about the income discrepancy were unclear and deficient for the following reasons: • did not include 1800 telephone number for the compliance helpline; • did not explain that customer could ask for an extension of time or assistance from compliance officer; • asked for confirmation that figure provided was correct which may have given the customer an incorrect impression; and • did not provide a clear explanation of that applying ATO income may negatively affect the amount of any debt.	LMA.1000.0001.2996 page 9 at [3.15]
Customers did not receive the initial contact letter and reminder letters as they were not sent to their current address - meaning the first time customers heard about the debt was through demand from a debt collection agency.	LMA.1000.0001.2996 page 9 at [3.16]
Customers had trouble using the Scheme and did not realise the importance of entering their fortnightly income information into the system.	LMA.1000.0001.2996 page 11 at [3.18]
If customers did not understand how debts were calculated then there was a risk that they may not engage with the Scheme in the intended way.	LMA.1000.0001.2996 page 12 at [3.20]
Accuracy of debts raised by OCI system	
Unclear how many debts may be under-calculated or overcalculated and by what margin due to the absence of modelling.	LMA.1000.0001.2996 page 8 at [3.5]
Risk of over-recovering debts from social security recipients including vulnerable people.	LMA.1000.0001.2996 page 8 at [3.6]
Ten per cent recovery fee	
Reminder and debt notification letters did not include an explanation of "reasonable excuse" in relation to recovery fee.	LMA.1000.0001.2996 page 8 at [3.9]
Problems gathering employment income evidence	
Not reasonable or fair to place greater emphasis on customer's responsibility to either accept the debt or provide further information.	LMA.1000.0001.2996 page 12 at [3.22]

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Negative statements	Document reference
DHS advised that the requirement for documentary evidence was reduced substantially, but even customers who were not formally required to provide documentary evidence would generally need to collect income information to enter correct data into the system.	LMA.1000.0001.2996 pages 12-13 at [3.23]
Unreasonable requirement for record retention (6-7 years).	LMA.1000.0001.2996 page 13 at [3.24]
Customers were told that payslips were the only acceptable form of evidence and bank statements would not be accepted (which is untrue).	LMA.1000.0001.2996 page 14 at [3.26]
DHS should have provided customers with additional support and assistance to obtain this evidence as customers do not have the same information gathering powers as DHS.	LMA.1000.0001.2996 page 14 at [3.27]
Given the complexity of collecting historical employment information the 21-day timeframe was an inadequate time for customers to respond in.	LMA.1000.0001.2996 page 14 at [3.28]
Service delivery - adequacy of communication	
DHS did not adequately prepare its call centre and local service centre staff to respond to Scheme enquiries.	LMA.1000.0001.2996 page 18 at [3.35]
DHS underestimated the difficulties customers would have using the Scheme and the demand for its call centre and in-person services.	LMA.1000.0001.2996 page 18 at [3.36]
DHS' communication and training strategy for staff was inadequate.	LMA.1000.0001.2996 page 18 at [3.37]
Letters not always an effective method of contacting vulnerable customers, including where customers are illiterate.	LMA.1000.0001.2996 page 22 at [3.47]
Governance and risk management	
The following was required: • more rigorous testing with customers and service delivery staff prior to the rollout of the Scheme; • slower, more incremental rollout; • better communication to staff and stakeholders; and • better support for staff through an effective and incremental change management process.	LMA.1000.0001.2996 page 23 at [3.52]
The Scheme shifted complex fact finding and data entry functions from department to the individual and success relied on usability.	LMA.1000.0001.2996 page 23 at [3.54]
Conclusions and recommendations	
Risks could have been mitigated through better planning and risk management arrangements at the outset that involved customers and other external stakeholders in the design and testing phases.	LMA.1000.0001.2996 page 26 at [4.1]
DHS did not clearly communicate aspects of the system to its customers and staff which led to confusion and misunderstanding	LMA.1000.0001.2996 page 26 at [4.2]

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Negative statements	Document reference
Public concern about the ability of the Scheme to accurately calculate the various kinds of income a person receives.	LMA.1000.0001.2996 page 41 at [2.27]
DHS' approach could not have been fair and effective as it was not effective in its communication to customers about the availability, meaning and importance of reasonable excuse, and the ways of notifying the excuse to the department.	LMA.1000.0001.2996 page 43 at [2.41]
Scheme messaging lacked clarity and the 'personal circumstances' question may have been insufficient to elicit the necessary reasonable excuse information.	LMA.1000.0001.2996 page 44 at [2.43]

Annexure E - List of DSS/DHS correspondence

Date	Document title	Doc ID
30 January 2017	Email from Michael Robinson to internal DHS team in relation to opportunity to "co-write the report with the Ombudsman's office" after being advised of the Own Motion investigation.	CTH.3005.0002.3363R
2 February 2017	Email from Michael Robinson in relation to draft response to the Office draft Report.	CTH.3001.0034.6807
20 February 2017	Email chain between Louise Macleod and Richard Glenn providing briefing prior to meeting with Jonathan Hulson.	LMA.1000.0001.2053
4 April 2017	Letter from Finn Pratt to Richard Glenn in relation to draft Report and providing confirmation of compliance with legislative requirements.	LMA.1000.0001.2996 at 3050
2 November 2022	Evidence of Jonathan Hutson: • that he understood the Scheme to be legal based on internal assurances: at [34]-[40] that he was not aware of DHS obtaining legal advice in relation to the sufficiency of the evidence to raise a debt under the programs comprising the Scheme, or their lawfulness more generally: at [73].	JHU.9999.0001.0027
10 November 2022	Evidence of Finn Pratt: • that he did not make further inquiries about the lawfulness or otherwise of the Scheme: T885:8-26 • that he did not take any steps to satisfy himself that the Scheme was operating in accordance with legislative requirements: T891:37-40 • that he was wrong in his assertion to the Ombudsman in relation to the Scheme T897:46-T898:3 • that he did not ask for legal advice, or seek assurance that legal advice had been obtained, in order to make the representation about the lawfulness of the Scheme in his letter to the Ombudsman: T900:34-39 • that the Scheme was implemented in the absence of the required legislative change, without his knowledge T903:32-T904:18	

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Date	Document title	Doc ID
8 March 2023	Evidence of Louise Macleod: • that the Office was not provided with criticisms of DSS to DHS on proposal for the Scheme and the draft New Policy Proposals: T4691:11-43 • that the Office was not provided with documents relevant to a DHS legal advice: T4700:11-24 • that the Office was not provided with instructions to Australian Government Solicitor: T4702:2-22 • that the Office was not provided with instructions for legal advice from Mr Jones to Ms Pulford dated 31 October 2014: T4721:37-47	

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Annexure F - Correspondence of the investigation team seeking copies of Departmental legal advice or confirmation of legal matters

Date	Description	Document ID
23 January 2017	The Office requested copies of legal advice concerning the legality of averaging income to raise debts.	CTH.1000.0006.9901
24 January 2017	DHS provided three pieces of advice to the Office following a request made on 23 January 2017. *Attached Advice:* Provision of internal legal advice dated 14 January 2015 [CTH.3502.0001.0622] Provision of internal legal advice dated 17 April 2015 [LMA.1000.0001.2277] Provision of internal legal advice dated 14 May 2015 [LMA.1000.0001.3116]	CTH.3502.0001.0608
2 February 2017	DHS addressed the Office's further question in relation to legal advice provided to the Office on 24 January 2017	CTH.3007.0004.5281
3 February 2017	Action item arising from meeting between Office representatives and DHS representatives - the provision of any legal advice that would be useful to the investigation.	CTH.3007.0004.5417
19 February - 23 February 2017	Email chain between Louise Macleod and Verity Hughes (DSS), copied to Ombudsman Complaints and the Social services and indigenous team (DSS), in which Louise Macleod requested copies of DSS legal advice and Verity Hughes provided legal advice.	RGL.1000.0000.1119
24 February 2017	Office requested advice from DHS received from DSS regarding legislative changes that would be needed.	LMA.1000.0001.0151
1 March 2017	Email from Verity Hughes (DSS) to Louise Macleod explaining the provision of advice between 2014 and 2017 in response to request made on 24 February 2017	LMA.1000.0001.0081

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Annexure G - Table of pending AAT cases

Proceeding commencement date	AAT Review Number	Parties	Decision Date
4 November 2016	2016/M102583	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	17 February 2017
9 January 2017	2017/B105503	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	21 February 2017
26 November 2016	2016/A103546	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	9 March 2017
30 November 2016	2016/S103893	Applicant. Redacted Other Parties: Secretary, Chief Executive Centrelink	15 March 2017
2 December 2016	2016/A104055	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	21 March 2017
24 March 2017	2016/M103550	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	24 March 2017
21 February 2017	2017/M107418	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	24 March 2017
13 March 2017	2016/B103477	Applicant. Redacted Other Parties: Secretary, Chief Executive Centrelink	30 March 2017
21 March 2017	2017/A108663	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	4 April 2017
23 January 2017	2017/S10648	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	6 April 2017
12 December 2017	2017/S117817	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	7 February 2018
30 October 2017	2017/S116516	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	14 February 2018

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Proceeding commencement date	AAT Review Number	Parties	Decision Date
16 February 2017	2018/A119369	Applicant: Redacted Other Parties: Secretary, Chief Executive Centrelink	4 May 2018